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"Making Excellence Inclusive" in Education and Beyond

Alma Clayton-Pedersen

Sonja Clayton-Pedersen

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"Making Excellence Inclusive"[1] in Education and Beyond

Alma Clayton-Pedersen* & Sonja Clayton-Pedersen**

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1. "Inclusive Excellence" is one of the Association of American Colleges and Universities' ("AAC&U's") signature initiatives, and "Making Excellence Inclusive" conveys the action of this initiative. Both these terms are service-marked as titles of AAC&U's work on equity and educational excellence. AAC&U therefore asks that credit be given to AAC&U for its leadership on these issues, by including the following statement in your descriptions of work to which you apply these terms. The Association of American Colleges and Universities (AAC&U) has led in developing "Inclusive Excellence" and "Making Excellence Inclusive" as a guiding vision for and the intentional action of the higher education community. The Association appreciates being kept apprised of institutional progress in making "Inclusive Excellence" a shared priority.

* sAlma R. Clayton-Pedersen is a Vice President at the Association of American Colleges & Universities and had managed academic leadership development programs for faculty and administrators and grant-funded projects since joining AAC&U in 2000. She served the previous fifteen years at Vanderbilt University in a variety of roles in student affairs, a public policy center, in academic affairs, and as a faculty member. She and her Vanderbilt colleagues conducted more than twenty studies on the students' experience at the University. She is co-author of several research briefs, articles, and two monographs—*Making a Real Difference with Diversity: A Guide for Institutional Change*, and *Enacting Diverse Learning Environments: Improving the Climate for Racial/Ethnic Diversity in Higher Education*. Dr. Clayton-Pedersen consults with institutions in every sector of higher education as well as foundations, professional associations, businesses, and both state and federal government agencies. Dr. Clayton-Pedersen received a Bachelor of Science in Education from the University of Wisconsin-Milwaukee, and both a Master of Education in Human Development Counseling (Management Focus) and a Doctor of Philosophy in Policy Development and Program Evaluation from Vanderbilt University.

** Sonja K. Clayton-Pedersen is a senior Associate with Katten Muchin Rosenman LLP in Chicago, Illinois. She concentrates her practice in litigation and dispute resolution, handling a variety of general business and complex commercial matters. Katten is a full-service law firm providing counsel to a wide range of public and private entities including institutions of higher learning. Katten is a leader in the legal community in establishing effective diversity initiatives and Ms. Clayton-Pedersen has contributed to advancing these efforts through her work as co-chair of the firm's Minority Associates' Committee. Ms. Clayton-Pedersen graduated *cum laude* from Rhodes College with a Bachelor of Arts degree in Business Administration and received her Doctor of Jurisprudence from Vanderbilt University.

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I. ABSTRACT

In this article, we call for greater attention to the education of our country's broadening diverse population and for expanded efforts to transform how diversity initiatives are conceived and enacted. We summarize previous and current educational equity efforts, which are inadequate as currently crafted to address the needs of our stratified communities. We then focus on implementing strategies to achieve high levels of education for all students by first changing the public's perceptions about diversity from a shameful burden to an opportunity to utilize our inherent differences for learning—a change that is necessary to fulfill America's democratic ideals of equal justice and equal opportunity for all. Finally, we discuss the consequences for educational institutions, the larger society, and our system of justice if the nation continues "business as usual," including failing to educate the full population at a time when our nation needs appreciably more educated persons for our own democratic vitality and to fuel the global economy.

II. INTRODUCTION

The Supreme Court's 1954 decision in *Brown v. Board of Education* ending "separate but equal" policies in education was undeniably momentous.[2] Yet, today's civil rights strategists still confront the

2. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

imperative of remedying the vestiges of segregation and discrimination. These educational equity strategists have worked tenaciously to identify, implement, and sustain effective means to achieve the *real* outcome that the Brown family sought in their celebrated case. Though commentators have often simplified the goal of the case as merely opening all public classrooms to African American[3] children, the Browns fought for *access* to a high-quality education for their children[4] and others like them, in order to prepare them to participate fully in the American dream—the promise of the pursuit of happiness and equal opportunity to do so.

The history of the independence of the United States in 1776 tells the story of the Constitution's Framers struggling with "the question of slavery." They determined that persons of African descent essentially had the status of personal property for purposes of their masters' voting rights, and they excluded slaves from the protections the Constitution guaranteed to citizens.[5] Nearly nine decades later, the 1863 Emancipation Proclamation ended slavery, but it did not stop African Americans from being subjected to bigotry, discrimination, and racism.[6] These inequities resulted in tangible costs with respect to income and education that freed slaves paid, and their descendents continue to pay,[7] to claim their American citizenship. There can be little doubt that African Americans have been disadvantaged and

3. Initially, this article focuses on *Brown* and the remedies it set in place to redress past illegal actions. *Brown* focused on legally sanctioned segregation of Negro/Black children in public schools. *Id.* at 486 n.1. As more actions were filed and the populations affected changed, remedies took into account additional disenfranchised groups. We use Black and African-American, as well as White and Caucasian, interchangeably throughout the article. When discussing the groups encompassed by later broad diversity initiatives, we refer to the Latino/Hispanic, African-American/Black, and American-Indian populations collectively as "traditionally underrepresented students."

4. Although we argue for initiatives that have a broader definition of diversity, throughout this article we refer to *Brown* recognizing its limits in the new vision of diversity initiatives.

5. *See* U.S. CONST. art. IV; *see also* Alexander Tsesis, *A Civil Rights Approach: Achieving Revolutionary Abolitionism through the Thirteenth Amendment*, 39 U.C. DAVIS L. REV. 1773, 1791 (2006).

6. *See* Archives.gov, Featured Documents: The Emancipation Proclamation, http://www.archives.gov/exhibits/featured_documents/emancipation_proclamation/transcript.html (last visited Jan. 29, 2008).

7. In 2005, the median income for male and female adults over the age of twenty-five was $39,000 and $26,000, respectively. U.S. CENSUS BUREAU, INCOME, EARNINGS, AND POVERTY DATA FROM THE 2005 AMERICAN COMMUNITY SURVEY 10, 12 (2006), *available at* http://www.census.gov/prod/ 2006pubs/acs-02.pdf. For all racial/ethnic groups shown, median income increased as educational attainment increased. Among males, Asian/Pacific Islanders and Whites had higher median incomes ($49,000 and $47,000 respectively) than did males of other racial/ethnic groups. *Id.* Among females, Asian/Pacific Islanders and Whites had higher median incomes ($38,000 and $35,000 respectively) than did Blacks ($30,000) and Hispanics and American-Indians/Alaska Natives (both $28,000). *Id.*

wealthy Caucasian Americans privileged—both disproportionately—by the legacy of the Framers' early decisions. However, we assert in this article that the nation as a whole will be disadvantaged by the continuing racial and ethnic disparities in educational outcomes. These disparities are generally misunderstood by the public and the remedies are ill-conceived by legislators. This article focuses on why existing educational equity strategies have fallen short and what we as a nation might do to adequately address the challenge of embracing our differences for learning.

We represent two different professional perspectives on diversity—that of an educator of thirty years and that of an attorney of seven years. We also represent two different educational experiences—the former attended private parochial schools K-12 and both public and private universities, while the latter attended public schools K-12 and private undergraduate and graduate schools. Finally, as mother and daughter, we represent two different generations of America's education systems. Despite these distinctions, our perspectives converge around the need for productive national dialogue about race and the importance of enhancing institutional support for diversity initiatives in education and in the workplace, especially in light of the Supreme Court's more recent decision in *Grutter v. Bollinger*[8] and its progeny.

Our goals for this article are to: (a) make the case for more comprehensive strategies to achieve educational equity by highlighting the inadequacies of current efforts and by offering a means of implementing more comprehensive strategies; (b) change the country's conception of diversity and its social benefits by providing a richer understanding of the benefits of more inclusive educational and workplace environments that regularly and productively engage differences for learning; and (c) raise awareness of the consequences—for our education systems, for our economy, and most importantly, for our democracy—if we fail to address effectively the challenges of our nation's increasingly diverse population. In this article, we seek to provide a reasonable yet transformative approach to addressing the educational, moral, and legal imperatives which we have struggled to respond to effectively for far too long.

We seek to achieve these goals by first providing a brief summary of the various legal remedies implemented by schools, colleges, and universities. We then discuss the difficulties of changing America's education systems including the lack of a single system, lack of consensus regarding learning objectives across the systems, rankings competition in higher education, and lower learning expectations for particular groups of students at all levels. We then offer a framework for offering every student a high-quality education by working from kindergarten through college toward a set of

8. 539 U.S. 306 (2003).

essential learning outcomes, while simultaneously adhering to the principle of "Making Excellence Inclusive". These arguments call attention to the legal and educational imperatives of our proposition. Our final argument uses Census projections of the demographics of our nation to stress how the consequences of these realities also provide economic and democratic imperatives for making the transformative educational and workplace changes we call for.

III. IN SEARCH OF EDUCATIONAL EQUITY

The evolution of remedies for legally sanctioned racial segregation highlights the difficulty American institutions have in offering all students access to high-quality education. This section summarizes the responses of the education community to judicial desegregation orders and describes the underlying premises embodied in the early remedies and later diversity initiatives.[9] We also discuss a number of the difficulties in changing America's education systems.

A. An Overview of Remedies to Racial Segregation in Education

The remedies ordered by courts to address educational segregation covered all of public education, but different approaches were taken in K-12 and higher education, and they were met with different kinds of resistance. As such, we separate the discussion into school and higher education remedies to address these differences. Upon conclusion, the discussion converges as we detail the difficulties of change.

1. School Remedies

Although the Supreme Court in *Brown* unanimously affirmed the argument that the "separate but equal" doctrine was inherently flawed and

9. Early solutions to rectify past segregation are typically referred to as "remedies," which are most often implemented in school desegregation efforts. Contemporary efforts have been referred to as "diversity initiatives." The term "diversity initiatives" includes broader actions by a variety of social entities (e.g., schools, colleges, employers, social services, and other agencies) to counter the effects of past illegal actions. We believe that the former proactively seeks to redress the illegal action(s), while diversity initiatives seek to address the environmental consequences of social action and behavior that resulted from the continuation of illegal actions over time. We use these terms interchangeably to illuminate the conceptual foundation of efforts to redress legally sanctioned segregation in education that has framed the remedies and initiatives since *Brown*.

ordered schools to desegregate, the order[10] was slow to be put into practice and strongly resisted when it was finally executed. From 1993 to 1995, the lead author worked on an unpublished study of public schools in Jackson, Mississippi,[11] during which interviews with teachers and principals involved with the school system during early desegregation efforts revealed that it was 1970 before any discernable action was taken to desegregate Jackson's public schools.

Given the fifteen-year delay by public officials,[12] it is not surprising that educational equity strategists pushed for—and judges eventually responded by requiring—greater accountability structures to ensure that court orders would be enforced. Once officials implemented the orders, there was large scale "white flight" from public schools, and "Christian academies"[13] were created to replace the segregated public school system. Several study informants reported that it was common for departing teachers to abscond with the public schools' resources, including books, equipment, and other materials, which left remaining students with fewer educational resources.

The remedies and initiatives in K-12 schools that resulted from *Brown* and its progeny morphed over time to focus on sustaining "racial balance," including busing, redistricting, lotteries, magnet schools, and voluntary methods.[14] The most recent legislative effort toward large-scale educational equity is the No Child Left Behind Act, commonly referred to as NCLB.[15] After seven years of national implementation, preliminary reports indicate that NCLB has not made a significant difference in narrowing the achievement gap between White students and historically underrepresented minority students. This result may be due, in part, to officials setting state achievement standards to the lowest common denominator, which often establishes a single test to indicate achievement. These "high stakes" tests draw attention to the existing inequities, but also ignore that these policies

10. The order followed (albeit much delayed) the Supreme Court's historic *Brown v. Board of Education* decision, which ordered schools to end decades of legally sanctioned segregation with all deliberate speed. 347 U.S. 483, 495 (1953).

11. WILLIS D. HAWLEY, A STUDY OF PARENTS FOR PUBLIC SCHOOLS IN JACKSON, MISSISSIPPI.: AN UNPUBLISHED FINAL GRANT REPORT TO THE FORD FOUNDATION (1996).

12. *See generally* Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971).

13. *See* Tracey L. Meares & Kelsi Brown Corkman, *When 2 or 3 Come Together*, 48 WM. & MARY L. REV. 1315, 1364 (2007).

14. *See Swann*, 402 U.S. at 1 (noting use of racial balancing quotas, redistricting, and busing); *see also* Missouri v. Jenkins, 495 U.S. 33 (1990) (noting use of magnet schools).

15. The No Child Left Behind Act of 2001, Pub. L. No. 107-110, § 1, 115 Stat. 1425 (2002) (codified at 20 U.S.C. § 6301 (2006)). The NCLB legislation has three major elements intended to drive change: (1) school systems must collect disaggregated data to ascertain who is not well served by the education system; (2) schools must meet certain standards or face the potential loss of federal funds; and (3) financial incentives must be given to increase the quality of the teaching force. *Id.* As discussed below, however, the standard by which students, individual schools, and school districts are judged leaves something to be desired. *See infra* note 11 and accompanying text.

provide incentives for local school districts to: (a) ensure students achieve *only* the minimal benchmark, and/or (b) force out of the system those students who teachers and administrators assume will not meet the standard.

Although some progress has been made in providing access to education for previously excluded populations—for example, nearly fifty-five years of remedies have increased the number of previously underrepresented minority students attending predominately White schools and colleges—much of the current educational landscape appears unchanged from the mid-twentieth century. The nation's major urban public school districts are more segregated,[16] and educational outcomes are as unequal today as they were before the 1954 *Brown* decision.[17]

The underlying conceptual premise of these remedies—especially of the early ones—is flawed because the remedies assume that an equal education can be attained simply by offering Black students access to the same public schools and classrooms attended by their White peers. Instead of realizing the Brown family's goal of quality education, Black students lost access to teachers who believed in their ability to learn and to a supportive educational environment. In exchange, they gained access to desegregated schools, a seat next to mostly similarly situated poor White children, and teachers who often viewed them as intellectually inferior.[18] Equity strategists and other advocates have come to realize that winning the right to attend previously segregated schools does not equate with the right to an unencumbered, high-quality education.

2. Colleges

Although a Birmingham federal court ordered the University of Alabama to admit its first Black student in 1956, early remedies to desegregate higher education are most vividly exemplified by two other incidents.[19] The first was the enrollment of the first Black student, James

16. GARY ORFIELD & CHUNGMEI LEE, HISTORICAL REVERSALS, ACCELERATING RESEGREGATION, AND THE NEED FOR NEW INTEGRATION STRATEGIES, at 5, *available at* http://www.civilrightsproject.ucla.edu/research/deseg/reversals_reseg_need.pdf; *see also* LESSONS IN INTEGRATION: REALIZING THE PROMISE OF RACIAL DIVERSITY IN AMERICA'S PUBLIC SCHOOLS (Gary Orfield & Erica Frankenberg eds., 2007) [hereinafter LESSONS IN INTEGRATION].

17. Kati Haycock, *Raising Achievement and Closing Gaps Between Groups*, Presentation at Leadership America in Washington D.C., (Oct. 16, 2007), *available at* http://www2.edtrust.org/EdTrust/Product+Catalog/archives-Oct07-Dec07.htm.

18. BEVERLY DANIEL TATUM, CAN WE TALK ABOUT RACE? AND OTHER CONVERSATIONS IN AN ERA OF SCHOOL RESEGREGATION (2007).

19. E. CULPEPPER CLARK, THE SCHOOLHOUSE DOOR: SEGREGATION'S LAST STAND AT THE

Meredith, at the University of Mississippi ("Ole Miss") in 1962.[20] Governor Ross Barnett blocked Mr. Meredith's entry and was subsequently confronted by troops ordered by President Kennedy to ensure compliance with federal desegregation orders.[21] The second occurred in Alabama when Governor George Wallace, following Governor Barnett's lead, blocked Black students Vivian Malone and James Hood from entering the University of Alabama's flagship campus at Tuscaloosa in 1963.[22] The President again ordered troops, this time to ensure that Black students would be able to enroll at the University of Alabama.[23]

The print and television coverage of these events enabled the world to become eyewitnesses to the clash between the enactment of America's larger democratic ideals of equal opportunity and justice for all, and individual Caucasian Americans' fear of real interaction and engagement with other racial groups. The law was clear, however; all citizens had the right to attend publicly-funded schools and colleges, and states were responsible and held accountable for actively redressing previous exclusion.

Mr. Meredith's entry to Ole Miss was a significant breakthrough, but it was not even close to the end of segregation in Mississippi. In 1975, the United States intervened on behalf of private plaintiffs, alleging that, in dismantling the state's "separate but equal" university educational system, Mississippi had failed to fulfill its duty under the Fourteenth Amendment's Equal Protection Clause.[24] The wrangling continued until 1992, when the U.S. Supreme Court held that Mississippi did not meet its "affirmative obligation" to dismantle a racially-discriminatory, dual-tiered university system that was in violation of the Constitution and Title VI of the Civil Rights Act of 1964.[25]

Diversity initiatives on college campuses—even in less resistant state systems—did not develop primarily from an enlightened sense of an educational imperative on the part of college officials. Like the flawed premise of early desegregation remedies in primary and secondary education, merely focusing on admission to predominately White colleges did not address the pernicious perceptions of intellectual inferiority held by these institutions' faculty and student body, nor the frequent and outright hostility directed toward these college newcomers.[26]

UNIVERSITY OF ALABAMA (1993).

20. *See* Integrating Ole Mississippi: Who Was James Meredith?, http://www.jfklibrary.org/meredith/jm.html (last visited Jan. 28, 2008).

21. *See id.*

22. *See* Governor George C. Wallace's School House Door Speech, *available at* http://www.archives.state.al.us/govs_list/schooldoor.html (last visited Jan. 28, 2008).

23. *See id.*

24. *See* United States v. Fordice, 505 U.S. 717, 723-24 (1992).

25. *See id.* at 743.

26. *See* Derrick A. Bell, Jr., *Minority Admissions and the Usual Price of Racial Remedies*, 67

Black students in some instances were not academically prepared for college-level work, but these, as well as many students who were prepared, had a "revolving door" experience.[27] As college officials grappled with these realities, diversity initiatives began to focus more on retention and to include better preparation and support programs. More sophisticated research and practice showed campus and system officials that persistence and degree completion required attention; they responded by adding programs to improve the outcomes of their equity efforts. While the goal was to improve educational outcomes, throughout the evolution of these diversity initiatives, the underlying premise was to add programs that would "fix the newcomers," thus reinforcing perceptions of inherent intellectual inadequacies of African Americans.

Officials rarely examine institutional structures and practices that may impede newcomers' progress toward degree completion—designs that work well for students whose families have a legacy of attending college. A narrow focus on students' readiness for college enables officials to ignore antiquated institutional policies and structures that do not serve any current college-goers very well. The narrow focus on student readiness also masks the reality that large numbers of faculty use teaching methods that are inconsistent with what the research indicates achieves more powerful learning outcomes for all students.[28] Moreover, faculty members complain about difficulty of teaching the "quality" of the students admitted. Indeed, the higher education community was not ready then—and continues to lag behind in its readiness—to prepare college students, regardless of race or ethnicity, for the challenges of a global twenty-first century. If the education community continues its current approaches, its readiness to meet the resulting challenges of an increased number of differently prepared students that must be educated in the future will be severely tested and are likely to fail.

Why is the challenge of providing historically underrepresented students an equitable education so intractable? We believe that it is in part due to the flawed underlying premise of the early legal remedies and later diversity initiatives. In short, the remedies failed to address the real challenge—that is, race-based myths and stereotypes that foster a generalized belief that particular groups of students cannot learn at high levels. We discuss these

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CAL. L. REV. 3, 8 (1979).

27. Barbara J. Love, Issues and Problems in the Retention of Black Students in Predominantly White Institutions of Higher Education, 26 EQUITY & EXCELLENCE IN EDUC. 27 (1993).

28. *See* JOHN D. BRANSFORD, HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL (1999).

and other difficulties in changing America's education systems next; they all contribute to the intractability of the challenge.

B. The Difficulty of Change in American Education

The sheer size of America's education enterprise suggests that the challenges facing our education system with respect to providing every student a high-quality education are many and complex.[29] We have alluded to the effect of myths and stereotypes of intellectual inferiority that motivated segregation policies.[30] Another component of the challenge is the plethora of state education systems with numerous different standards, rather than a single set of learning objectives upon which the nation's educators are focused. Other parts of the challenge include how the systems respond to policy mandates for improvements, competition for the "best" students and higher rankings in higher education, and the belief that not all students can learn at high levels.

1. Flawed Premise of the Remedies

With the *Brown* case, African Americans assumed that the aspects of high-quality education that they sought (e.g., access to the most current books, up-to-date lab facilities, and highly trained teachers) would remain at the newly desegregated schools. This was not borne out in the reality of the desegregation remedy. Indeed, the inferiority myth is so reified in the American psyche that it has become ubiquitous within many teachers, both White and Black, which results in lower expectations of African American students.[31] These myths retard the progress that can be made when diversity initiatives are geared towards ensuring that all students achieve the high-quality learning necessary to thrive in a complex, twenty-first century society.

Advocates of desegregation in education imagined that by winning, African Americans would be much better off educationally, if not immediately, then at some point in the future.[32] The large disparities in educational outcomes across racial groups that exist today suggest that equity strategists may have underestimated: (a) the depth of racial animosity toward African Americans; (b) the entrenched notion of the racial

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29. At the time of the 2000 census, there were 76,632,972 students enrolled in the American education system. U.S. CENSUS BUREAU, SCHOOL ENROLLMENT: 2000, at 2 (2003), *available at* http://www.census.gov/prod/2003pubs/c2kbr-26.pdf.

30. *See supra* Part III.A.2.

31. TATUM, *supra* note 18.

32. *See* Robert L. Carter, *Reexamining Brown Twenty-Five Years Later: Looking Backward into the Future*, 14 HARV. C.R.-C.L. L. REV. 615, 616-18 (1979).

superiority of Caucasians; and (c) the potential impact of the remedies that were enacted.[33] The legal notions of equal educational opportunity espoused in *Brown* did not dispel the most insidious aspects of segregation. The pervasiveness of these myths, and other more benign stereotypes about historically underrepresented students, continue to fuel resistance to real integration at all levels of American education.[34] If left unaddressed, however, these pernicious and debilitating myths, stereotypes, and inadequate institutional structures risk rendering *all* students under-prepared for a globally interdependent world.

2. Multiple systems

In the United States for the academic year 2004-2005, there were 97,000 public schools in 14,205 school districts, and 4,216 two- and four-year degree-granting institutions. Of the latter, 879 were for-profit colleges and universities.[35] Each state sets its own curriculum, standards, and regulations for advancement through its K-12 and higher education systems, while the local school district decides on the materials they will use to implement the curriculum. In many instances, the regulations fully apply to public institutions, but only partially apply to independent—particularly religious—schools. Schools, colleges, and universities are accredited through a peer-review process.[36] Although there is an umbrella accrediting organization for postsecondary education—the Council of Higher Education Accreditation—individual educational institutions are reviewed by by one of six regional accrediting bodies, each with their own review standards.[37] Add to this

33. *See* Shavar D. Jeffries, *The Structural Inadequacy of Public Schools for Stigmatized Minorities: The Need for Institutional Remedies*, 34 HASTINGS CONST. L. Q. 1, 16-17 (2007) (summing up current statistics concerning poor minority performance in public schools).

34. *See* Lia B. Epperson, *True Integration: Advancing Brown's Goal of Education's Equity in the Wake of* Grutter, 67 U. PITT. L. REV. 175, 190-91 (2005).

35. U.S. Department of Education, National Center for Education Statistics, Digest of Education Statistics, http://nces.ed.gov/programs/digest/d06/tables/dt06_005.asp (last visited Jan. 29, 2008).

36. U.S. Department of Education, Accreditation in the United States, http//www.ed.gov/admits/finaid/accred/accredication_pg2.htm;#U.S. (last visited Jan. 29, 2008).

37. There is framework for what is included in the institutional reviews across these regional bodies, but there is no single set of standards that is used by all bodies. *See* Council for Higher Education Accreditation, http://www.chea.org/Directories/regional.asp (last visited Jan. 30, 2008). The regional accrediting organizations include: Middle States Association of Colleges and Schools; New England Association of Schools and Colleges; North Central Association of Colleges and Schools; Northwest Association of School and Colleges; Southern Association of Colleges and Schools; Western Association of Schools and Colleges. *Id.*; *see also* U.S. Department of Education Accreditation in the U.S, http://www.ed.gov/admins/finaid/accred/accreditation_pg2.html#U.S.

another set of professional accreditation bodies in education,[38] engineering,[39] law,[40] medicine,[41] nursing,[42] early childhood education centers, and the list goes on.[43] The sheer magnitude of the systems—fifty sets of curricula and standards, six or more institutional accrediting bodies, and at least six professional accrediting bodies—makes it far more likely that a student finishing middle school in New York or Atlanta may be differently prepared to succeed in a high school in Los Angeles or Seattle than natives of these areas.

Currently, there is no national accountability structure tied to a specific set of student learning outcomes that is deemed essential by educators and employers alike. Achieving consensus on outcomes and ensuring equity across different groups requires that the outcomes be linked to the knowledge and skills needed to be successful in a global twenty-first century and clearly articulated to everyone who comprises the learning environment: school teachers, college faculty, students, parents, businesses, and local communities. To ensure public accountability, educators must document that students are achieving these learning outcomes in authentic and increasingly sophisticated ways from school through college. Setting expectations for all students to achieve the outcomes at high levels, communicating the expectations, and documenting achievement puts education officials in the position to hold the appropriate parties responsible for achieving the essential learning outcomes, and to hold them accountable for failure to achieve them.

Until the education community as a whole adopts a common set of high-level learning outcomes toward which all educators teach and all students strive, it will be left to chance which students will receive a high-quality education. And, chances are that those students who have been historically disadvantaged will continue to be so. If we adopt such a set of essential learning outcomes, the nation can begin to focus on truly ensuring that all students achieve at high levels—the goal that the Brown family sought for their children and others like them.[44]

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38. National Council for Accreditation of Teacher Education (NCATE), http://www.ncate.org (last visited Jan. 24, 2008).

39. ABET, Inc., http://www.abet.org (last visited Jan. 24, 2008).

40. American Bar Association (ABA), http://www.abanet.org (last visited Jan. 24, 2008).

41. Liaison Committee on Medical Education (LCME), http://www.lcme.org (last visited Jan. 24, 2008).

42. National League for Nursing Accrediting Commission, Inc. (NLNAC), http://www.nlnac.org.

43. JUDITH S. EATON, ACCREDITATION AND RECOGNITION IN THE UNITED STATES, *available at* http://www.chea.org/pdf/OverviewAccredSlideshow_0706.pdf; *see also* National Association for the Education of Young Children (NAEYC), http://www.naeyc.org (last visited Jan. 24, 2008).

44. *See* Brown v. Bd. of Educ., 347 U.S. 483 (1954).

a. Educating to Fulfill Policy Mandates Versus Educating for High Level Learning Outcomes

Politicians who tackle the challenges of the nation's education systems at all levels most often do so through rhetoric about the importance of education to America's global competitiveness and through legislation. While these pronouncements make the general public feel good, and legislative efforts like NCLB[45] have been enacted with good intentions, they have also had some unintended, negative consequences. For example, in 2006, for the first time, the fifty winners of the National Teachers of the Year Program made a collective statement about the negative effects that NCLB has had on their teaching.[46] These teachers—our nation's best—cautioned the public about the detriment of narrowly focusing learning on achieving a minimum score on a single "high stakes" test.[47] They report that no one asked them about how NCLB would affect teaching practice and student learning as the legislation was being developed. They are now calling for "Teachers [to be] at the Table" as this legislation is revised.

Add to this the reality that financial incentives to improve teacher education are directed toward institutions where some leaders view teacher preparation and other K-12 education issues as so entrenched and intractable that all that can be done is to treat it as the proverbial "third rail"—the electrified rail of a train that is extremely dangerous and something to be avoided or risk death. Some even view them as a "necessary evil"—because they (a) often generate income for the institution without large expenditures, and (b) enable public institutions to fulfill their social responsibility to produce teachers. Others in the Academy view teacher preparation programs as an academic evil because they seem to lack rigor, they generally do not generate research grants at levels like other professional programs such as engineering and medicine, and they often lack the respect afforded law and business professional programs. We do not interrogate the righteousness of these perceptions. Instead we refer readers who would like more depth on the issues to two studies about the challenges of teacher preparation and school leadership development programs.[48] Here,

45. *See supra* note 10 and accompanying text.

46. Vaishali Honawar, *Teachers of the Year Call for Changes to NCLB Law*, Education Week, Mar. 9, 2007, http://www.edweek.org (last visited Feb. 18, 2008) (search "Teachers of the Year Call for Changes to NCLB Law"; follow hyperlink with same title).

47. *Teachers Grapple with Attaining Education Law's Goals*, The News Hour with Jim Leher, Aug. 16, 2007, *available at* http://www.pbs.org/newshour/bb/education/july-dec07/nclb_08-16.html.

48. *See* ARTHUR LEVINE, EDUCATING SCHOOL LEADERS (2005), *available at* http://www.

we merely note the perception as a challenge to making needed changes in the nation's education systems.

b. Competition for Higher Rankings in Higher Education

Researchers have coined the term "mission creep" to describe the phenomenon of higher education institutions' desire to become something more than they are currently.[49] That is, they look toward the institutional peers that they aspire to be like and develop strategies to become more like these peers. In part, these aspirations are driven by college-going students and their parents' focus on U.S. News and World Report's college rankings, and in part by the nature of the system used to determine rank. That ranking system is comprised of an annual survey of institutional characteristics, including the number of books in the library, size of the endowment, research dollars garnered, average test scores of the incoming freshman class, first to second year retention rates, and a questionnaire completed by institutional administrators who subjectively rate aspects of other institutions, to name a few.[50]

Like legislative mandates, "mission creep" could provide motivation for educational improvement, but it has resulted in institutions behaving in ways that often work against reform efforts.[51] For example, there has been a documented shift in higher education from need-based to non-need-based (so called "merit") scholarship aid.[52] This shift was made partly to bolster the average test scores of the incoming freshman class.[53] That is, by "buying" enough high-scoring students, an institution could potentially boost its ranking.

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edschools.org/pdf/Final313.pdf; *see also* ARTHUR LEVINE, EDUCATING SCHOOL TEACHERS (2006) *available at* http://www.edschools.org/pdf/Educating_Teachers_Report.pdf.

49. ROBERT E. MARTIN, COST CONTROL, COLLEGE ACCESS, AND COMPETITION IN HIGHER EDUCATION 17 (2005).

50. *See generally* U.S. News & World Report, America's Best Colleges 2008: Undergraduate Ranking Criteria and Weights, http://colleges.usnews.rankingsandreviews.com/usnews/edu/college/rankings/about/weight_brief.php.

51. *See, e.g.*, SANDY BAUM & LUCIE LAPOVSK, TUITION DISCOUNTING: NOT JUST A PRIVATE COLLEGE PRACTICE, *available at* http://www.collegeboard.com/prod_downloads/press/tuition-discounting.pdf (discussing shift in the 1990s from need-based to non-need based aid).

52. *See id.* at 3-6; *see also* Elizabeth F. Farrell, *Public-College Tuition Rise is Largest in Three Decades*, CHRONICLES OF HIGHER EDUCATION, Oct. 31, 2003, at A1 (reporting that many state universities have increased the amount of financial resources dedicated to merit-based scholarships in an effort to improve their academic rankings).

53. *See* Ruby Z. Afram, *Civil Rights, Antitrust, and Early Decision Programs*, 115 YALE L.J. 880, 887 (2006) (noting that university rankings are largely affected by the school's ability to attract top students—a drop in rankings requires the school to become less selective in the admission process which affects the average SAT score of incoming students).

c. *Instructors Believe That Not All Students Can Learn at High Levels*[54]

Since many instructors work with students whose educational experiences range from very poor to excellent, it is not surprising that they have come to believe that not all students can learn at high levels. This inference, however, ignores the critical role that educational resources play in developing a student's readiness and ability to learn.[55] That is, even at the preschool level, students arrive at classrooms "behind" because they have not had sufficient access to appropriate educational materials, let alone those that accelerate learning.[56] These materials include books and other developmentally appropriate materials that stimulate language acquisition, object recognition, and other brain functions, materials that more advantaged children have access to from birth.

Extend the deprivation of educational resources throughout the K-12 experience and it becomes clear why so many high school graduates arrive on college campuses needing so called "remedial" education. Many instructors, at all educational levels, lack the necessary skills to approach the curriculum using developmentally appropriate teaching methods with the wide array of learners they encounter, both in a single class and across classes. Instructors are more apt to blame the victims of poor education rather than the systems that failed to provide students with the quality education needed for academic success. To be sure, some students lack motivation or parental support and do not develop their skills and abilities to their highest potential. However, there is abundant evidence which documents that low-income and underrepresented minority students are more likely than their more privileged peers to be in classrooms with less qualified teachers—both cases of instructors who are teaching subjects that they have not mastered and cases of instructors who have not mastered methods of good teaching.[57]

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54. Note that we recognize that there are students with special learning disabilities who are limited in their ability to achieve high-level cognitive functioning.

55. *See* Anthony P. Carnevale, *Investing in Human Capital—Accountability in Standards-Based Education*, SCHOOL ADMINISTRATOR (Mar. 2001).

56. Not only do many students lack access to preschool learning, the access that many have is not high-quality learning, but "babysitting." *Id.* "In 2005, White, Black, and Asian/Pacific Islander three- to five-year-olds were more likely to be enrolled in center-based preprimary programs than were Hispanic three- to five-year-olds, and three- to five-year-olds whose families were at or above the poverty line were more likely to be enrolled than were those whose families were in poverty." *Id.*

57. *See* ORFIELD & LEE, *supra* note 16, at 20; *see also* LESSONS IN INTEGRATION, *supra* note 16.

The difficulties we have outlined exacerbate conditions that are already challenging our school systems, including: a lack of public support and funding; a lack of respect for teaching as a profession; and the perception of education as a private versus a public good. Many African American students, other underrepresented minority students, and low-income students, continue to experience hostile environments and low expectations for their academic achievement.[58] Emerging evidence suggests that even when underrepresented minority students enter college with academic characteristics similar to their Caucasian peers (e.g., high SAT/ACT scores and participation in academically rigorous programs of study), their college learning outcomes can still differ.[59] These studies suggest that what is needed goes beyond better subject matter preparation. We argue that the premises that underlie early remedies and current diversity initiatives are inadequate to address both the historical challenges of unresolved racial discrimination and new challenges that have emerged from the broadening diversity of America's population.

IV. A FRAMEWORK FOR OFFERING EVERY STUDENT A HIGH-QUALITY EDUCATION

In this section we provide a framework that offers promise for providing the full spectrum of America's population a high-quality education, and we discuss how this new conceptual approach might guide a concerned nation to create more equitable education and workplace environments.

The good news is that the broad challenges of race-based myths and stereotypes, the difficulties specific to education, and other barriers not detailed here, have begun to be addressed through collaborative initiatives that can serve as a framework for re-envisioning how the nation will offer every student access to a high-quality education.[60] In this section, we address how such a framework can achieve intended goals initiated in *Brown* and carried forward for the past half-century.

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58. THE EDUCATION RESOURCES INSTITUTE, A SHARED AGENDA: A LEADERSHIP CHALLENGE TO IMPROVE COLLEGE ACCESS AND SUCCESS (2005), *available at* http://www.teri.org/pdf/research-studies/ResearchReport_SharedAgenda.pdf.

59. E. M. BENSIMON, EQUALITY AS A FACT, EQUALITY AS A RESULT: A MATTER OF INSTITUTIONAL ACCOUNTABILITY (2005).

60. For example, since 2000, the AAC&U has engaged thousand of educators, hundreds of business and community leaders, and scores of students in exploring how we might raise the quality of American education. *See generally* AAC&U, http://www.aacu.org. While we do not intend to suggest that there is a silver bullet that addresses the barriers to achieving the goal of offering a high-quality education to all students, the work described herein is a starting point to discuss, explore, and assess promising models.

A. "Making Excellence Inclusive": Re-envisioning Diversity, Inclusion, and Excellence

The Liberal Education and America's Promise (LEAP) National Leadership Council, which includes business, education and community leaders, examined the nation's educational, civic, democratic and economic needs, and higher education's role in meeting these societal needs.[61] The Council concluded its investigation in 2007 with the release of its report, *College Learning for the New Global Century*, which identifies the aims of education, essential learning outcomes, and guiding principles for a twenty-first-century college education.[62] The report provides greater detail about the categories of learning outcomes[63] that all students need to achieve to meet the challenges of a twenty-first-century world.[64] In addition, the report

61. This group is part of the AAC&U. *See generally* AAC&U, http://www.aacu.org/advocacy/leap/leadership_councl.cfm.

62. THE NATIONAL LEADERSHIP COUNCIL FOR LIBERAL EDUCATION & AMERICA'S PROMISE, COLLEGE LEARNING FOR THE NEW GLOBAL CENTURY (2007), *available at* http://www.aacu.org/advocacy/leap/documents/GlobalCentury_final.pdf [hereinafter COLLEGE LEARNING].

63. The four essential learning outcomes are described as:

> (1) *Knowledge of Human Cultures and the Physical and Natural World*—through study in the sciences and mathematics, social sciences, humanities, histories, languages, and the arts, focused by engagement with big questions, both contemporary and enduring;
>
> (2) *Intellectual and Practical Skills*—including inquiry and analysis; critical and creative thinking; written and oral communication; quantitative literacy; information literacy; teamwork and problem solving; [all] practiced extensively, across the curriculum, in the context of progressively more challenging problems, projects, and standards for performance;
>
> (3) *Personal and Social Responsibility*—including local and global civic knowledge and engagement; intercultural knowledge and competence; ethical reasoning and action; foundations and skills for lifelong learning; [all] anchored through active involvement with diverse communities and real-world challenges; and
>
> (4) *Integrative Learning*—including synthesis and advanced accomplishment across general and specialized studies, demonstrated through the application of knowledge, skills, and responsibilities to new settings and complex problems.

Id. at 12.

64. These learning outcomes were first broadly identified in AAC&U's report, *Greater Expectations*. *See* ASSOCIATION OF AMERICAN COLLEGES AND UNIVERSITIES, GREATER EXPECTATIONS: A NEW VISION FOR LEARNING AS A NATION GOES TO COLLEGE (2002), *available at* http://www.csun.edu/academic.affairs/learning-centered_university/gex_final.pdf [hereinafter GREATER EXPECTATIONS]. The Greater Expectations initiative articulated the aims and purposes of a twenty-first-century liberal education, identified innovative models that improve campus practices and learning for all undergraduate students, and advocated for a comprehensive approach to education reform generally. The resulting report suggested ways to link the best aspects of school reform with the creation of a New Academy characterized by high expectations, a focus on learning, a commitment to demonstrated achievement, intentional practices, and an engaged, practical liberal education for all students. *See id.* The multi-layered initiative also produced seven other publications that included information on creating purposeful pathways from school to college, the

advances seven principles of excellence,[65] the first of which is to *Aim High—and Make Excellence Inclusive* by employing these essential learning outcomes as a framework for the entire educational experience, connecting school, college, work, and life. Applying this principle in particular will help educational reformers and those who are charged with implementing changes in practice to shift away from remedies that merely ensure access to a seat to remedies that ensure access to high-quality education for all students.

We are at a turning point in education where traditional indicators of student success and educational quality are under intense scrutiny, both inside and outside the academy and the larger education community. It is recognized as a period of transition, and institutions can either work to weather the transition, or they can use this critical point in time to realize this unprecedented approach.[66]

1. Re-envisioning Diversity

Many people define diversity solely in terms of racial/ethnic differences, which is not surprising given the particular historical legacies of race in the United States. "Making Excellence Inclusive" requires that the current definition of diversity be broadened and the traditional definition of excellence be reexamined. Some may broaden the definition of diversity by including multiple social identity dimensions such as gender, class, race/ethnicity, sexual orientation, religion, and so on. While these differences are recognized as important, for the concepts presented here, framers of the ""Inclusive Excellence"" concept at Association of American Colleges & Universities ("AAC&U") offer the following as a more comprehensive definition of diversity:

> Individual differences (e.g., personality, learning styles, and life experiences) and group/social differences (e.g., race/ethnicity, gender, country of origin, socio-economic status, and ability as well

responsibility of accrediting bodies in ensuring the quality of undergraduate education, improving the general education curriculum, and assessing general education.

65. The seven principles are: (1) Aim High—and Make Excellence Inclusive; (2) Give Students a Compass; (3) Teach the Arts of Inquiry and Innovation; (4) Engage the Big Questions; (5) Connect Knowledge with Choices and Action; (6) Foster Civic, Intercultural, and Ethical Learning; and (7) Assess Students' Ability to Apply Learning to Complex Problems. COLLEGE LEARNING, *supra* note 62, at 26.

66. We make no illusions that "Making Excellence Inclusive" will not be complicated; we have discussed a number of the challenges facing education—any one of which could derail efforts to enact such a vision. *See id.* at 27-28.

> as cultural, political, religious, or other affiliations) that can be engaged in the service of learning.[67]

Yet, even this broader definition of diversity, while necessary, is not sufficient for the education community to engage the idea of "Making Excellence Inclusive." AAC&U framers further define inclusion as:

> The active, intentional, and ongoing engagement with diversity—in people, in the curriculum, in the co-curriculum, and in communities (intellectual, social, cultural, geographical) with which individuals might connect—in ways that increase one's awareness, content knowledge, cognitive sophistication, and empathetic understanding of the complex ways individuals interact with systems and institutions.[68]

Both those who are working to end *de facto* racial segregation in education, and those who believe that racial discrimination no longer exists, may be concerned about these new conceptions of diversity and inclusion. Racial equity strategists may argue that these broad definitions incorporate far too many people to be able to address the historical legacy of slavery that remains only for African Americans. The vision that focuses on all students learning at high levels may appear to lack focus on redressing this historical legacy, a focus we agree is necessary to achieve equitable outcomes. They may also be concerned that parts of this broader definition of diversity will be used to promote the fallacy of America as a "colorblind" society and to argue that racial discrimination ended long ago.

On the other hand, advocates for building a "colorblind" society may be concerned that this new vision goes too far. When the "Inclusive Excellence" concepts become operational in day-to-day work, success means that all students are capable of recognizing and engaging differences in ways that lead to a type of learning excellence these advocates might choose to ignore. Others in this camp may see the very notion of "Inclusive Excellence" as oxymoronic—that by its very definition, excellence is exclusionary and, therefore, cannot be inclusive.

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67. ALMA CLAYTON-PEDERSEN ET. AL, MAKING EXCELLENCE INCLUSIVE: A FRAMEWORK FOR EMBEDDING DIVERSITY AND INCLUSION INTO COLLEGES AND UNIVERSITIES' ACADEMIC EXCELLENCE MISSION (2005).

68. *Id.*

Below, we work to quell these concerns and to convince both groups that these new notions of diversity, inclusion, and excellence offer a better chance to end discriminatory educational practices than previous remedies. We believe that these concepts also offer greater potential of fostering our ideal of living in a nation "with liberty and justice for all,"[69] than does rhetoric that suggests we teach students to blur our differences so as to avoid discomfort. Indeed, it is in the act of grappling with the paradoxes and complexities of ideas where learning occurs.[70] Our country's population will be better off acknowledging the truth—that we are a nation of many colors, faiths, incomes, family types, and political persuasions—and drawing our strength from a deeper understanding of our differences.

2. Re-envisioning Inclusion and Excellence

When educators intentionally work to make excellence inclusive, they work to extract the unique contributions that each person brings to the learning environment and to use it for the learning of all.[71] These individual and group assets—assets that everyone in the learning environment brings to the teaching and learning endeavor—can be tapped for a deeper understanding of the course content; it places the learning in a social context of real people and events. In these definitions of diversity and inclusion, European- American culture is not the norm against which cultures are examined for learning. Rather, it is one of many perspectives from which students engage the examination of culture. Learning then becomes the central focus of the instructor and the students' collective attention. Diversity initiatives focus on how instructors and students draw on all of the diversity in a learning environment to enhance the learning of all. Diversity then is no longer "the other" and synonymous with racial and ethnic minority students, gay and lesbian students, low-income and first-generation students, while those historically privileged are the norm and at the center of learning. In this new conception, all dimensions of identity and all people are included as part of diversity—men, Whites, the wealthy, heterosexuals, and so on.

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69. This is the end of the Pledge of Allegiance. *See* David A. Toy, *The Pledge: The Constitutionality of An American Icon*, 34 J.L. & EDUC. 25, 25 (2005).

70. Cognitive Dissonance is defined as "[a] condition of conflict or anxiety resulting from inconsistency between one's beliefs and one's actions, such as opposing the slaughter of animals and eating meat." The American Heritage Dictionary of the English Language, *available at* http://www.dictionary.reference.com/browse/cognitive dissonance (last visited Mar. 24, 2008).

71. In the AAC&U framers' conception of "Inclusive Excellence," everyone in the learning environment contributes to the learning of all others including the student affairs professionals, librarians, and even departmental secretaries, as well as the faculty. They are all learning facilitators, but they are also themselves learners from an organizational learning perspective. However, detailing this here goes beyond the scope of the current discussion.

As the definition of diversity is broadened, educators are cautioned to be cognizant of how racial and ethnic minority students can easily be made the "targets"[72] of learning. Educators should (a) recognize that the educational experiences of students are differentiated by the extent of their previous access to quality educational resources, and (b) understand how these experiences influence students' readiness—not their ability—to learn.[73]

In these and other ways, the notion of "Inclusive Excellence" re-envisions both quality and diversity.[74] It reflects a striving for excellence that has been made more inclusive by decades of work.[75] That work included infusing diversity into the curriculum and co-curriculum; into administrative structures and practices; into college admissions; and into hiring in education and industry.[76] This striving also embraces newer forms of excellence, and it expands ways to measure excellence that take into account research on learning and how the brain functions,[77] alternative ways to capture what students know and are able to do,[78] the assessment

72. Instructors unskilled at using diversity and difference for learning will sometimes single out historically underrepresented students to describe social challenges such as welfare, urban crime, and immigration as a way to be "inclusive." Rather than being inclusive, such actions will more likely be viewed as offensive by the "targeted" student and reinforce the prevailing myths that most historically underresented students are from low-income backgrounds, have experience with criminal enterprises, or are from illegal immigrant families. When the instructor adopts an "Inclusive Excellence" framework, she views everyone in the class as a resource on the topic while at the same time recognizing that students' perspectives will vary based on their personal experience with the topic. When the instructor assumes that any student can contribute something to the learning—even if it reveals pervasive myths and stereotypes about certain groups of people—she accepts the possibility of any student making a contribution to the leaning of all students and her own. If stereotypical perspectives are openly revealed, they can be examined openly and in a supportive environment where all students can critically examine them. Clearly, in order for instructors to intentionally foster rich leaning during these "teachable moments" it requires that they build the capacity to facilitate such dialogues comfortably, and in ways that ensure that students' achieve the desired learning outcomes.

73. *See* Greta K. Nagel, *Looking for Multicultural Education: What Could be Done and Why it Isn't*, 119 EDUC. 254 (1999).

74. *See* Posting of Nacho Cordova to Mindfulness in Education Network, http://www.mindfuled.org/2005/09/toward_an_inclu.html (Sept. 9, 2005, 17:26 EST).

75. *See* YOLANDA T. MOSES, BLACK WOMEN IN ACADEME: ISSUES AND STRATEGIES (1989); DARYL. G. SMITH, DIVERSITY WORKS: THE EMERGING PICTURE OF HOW STUDENTS BENEFIT (1997); Association of American Colleges & Universities, *The Future of Diversity*, 91 LIBERAL EDUCATION 1 (2005).

76. RODERICK PALMORE, A CALL TO ACTION: DIVERSITY IN THE LEGAL PROFESSION (2004), *available at* http://www.acc.com/public/accapolicy/diversity.pdf.

77. *See* BRANSFORD, *supra* note 28.

78. *See* DEBORAH BIAL, ALTERNATIVE MEASURES FOR COLLEGE ADMISSIONS: A RELATIONAL STUDY OF A NEW PREDICTOR FOR SUCCESS (2004); *see also* WILLIAM E. SEDLACEK, BEYOND THE BIG TEST: NONCOGNITIVE ASSESSMENT IN HIGHER EDUCATION (2004).

movement,[79] and more nuanced accountability structures.[80] Diversity initiatives then move beyond numbers of students and programs as end goals. Instead, diversity and inclusion, together, become a multilayered process through which we achieve excellence in learning, research and teaching, student development, institutional functioning, local and global community engagement, workforce development, and more.[81]

This vision means that everyone will need to share responsibility for this new work and be held accountable for establishing learning environments that ensure all students achieve essential learning outcomes. Below, we highlight higher education's unique position to take a leading role in helping the education community make this conceptual shift. We then provide guidance for the work ahead by illustrating some of the distinctions between traditional notions of diversity, inclusion, excellence, and the hallmarks of "Inclusive Excellence".

V. "MAKING EXCELLENCE INCLUSIVE": HIGHER EDUCATION'S UNIQUE ROLE

Over time, higher education leaders have begun to realize that incorporating more diverse student populations, diversity in the curriculum, and other such efforts into campus life raises profound questions about higher education's mission and purpose and necessitates a new approach to the work of doing higher education.[82] Although many leaders agree on the need for systemic change, current institutional engagement with diversity more often consists of scores of isolated initiatives that have been insufficiently linked to the core academic mission and inadequately coordinated across different parts of the academic enterprise.[83]

Higher education can play a pivotal role in the shift called for in the "Inclusive Excellence" concept. Not only does the higher education community produce its own workforce (via the development of its faculty and most of its staff), but colleges and universities develop educators for every level of America's systems of education. Higher education's position at the intersection of every facet of education gives it the potential to be a

79. *See* RICHARD J. SHAVELSON, A BRIEF HISTORY OF STUDENT LEARNING ASSESSMENT: HOW WE GOT WHERE WE ARE AND A PROPOSAL FOR WHERE TO GO NEXT (2007); ROSS MILLER & ANDREA LESKES, LEVELS OF ASSESSMENT: FROM THE STUDENT TO THE INSTITUTION (2005).

80. ALMA R. CLAYTON-PEDERSEN ET AL., MAKING A REAL DIFFERENCE WITH DIVERSITY: A GUIDE TO INSTITUTIONAL CHANGE (2007).

81. *See* DAMON A. WILLIAMS ET AL., TOWARD A MODEL OF INCLUSIVE EXCELLENCE AND CHANGE IN POSTSECONDARY INSTITUTIONS vi (2005), *available at* http://www.aacu.org/inclusive_excellence/documents/Williams_et_al.pdf.

82. *See id.* at 2-3.

83. *See id.* at 26.

powerful force for change.[84] However, we will first characterize the current higher education environment to provide a clearer picture of the internal work that higher education must do if and when it chooses to lead the nation's education reform efforts.[85]

For the most part, the elements that make up the enterprise—the buildings, the instructors, the support systems, and the learners—are largely thought of as separate from one another.[86] Although they share the same physical space, institutional leaders have divided the parts so that they can be easily monitored, managed, and maintained. Descriptors of these larger components include learning facilities such as classrooms and libraries, learning resources such as academic advising and library books, and learning facilitators, including faculty and career counselors. And, of course, students and faculty are some of the learners. Mainly, this environment is characterized by the isolated functioning of these individual parts, which is particularly true of the disciplines and evident in the structure of academic departments.[87] For the most part, faculty members function within the silos of their disciplines, frequently having greater interaction with faculty in an institution 2,000 miles away than with those in the building next to them.[88]

Too often, these institutional elements serve as ends unto themselves. Our institutional leaders are more often in reactive, versus proactive, mode.[89] That is, they are faced with an array of moral, political, legal and practical imperatives to which they must constantly mount responses that take into account a range of constituents—parents, legislators, students, faculty, as well as business and community leaders.[90]

"Making Excellence Inclusive" asks the education community to: (a) establish diversity and inclusion as hallmarks of academic excellence and institutional effectiveness; (b) operationalize inclusion in all spheres and at all levels of functioning; (c) ensure that academic freedom and corollary responsibilities are understood and practiced by students and faculty alike;

84. *See, e.g.*, GREATER EXPECTATIONS, *supra* note 64.

85. These characterizations are especially true at very large research and comprehensive universities and community colleges, and they are less so at small colleges and universities.

86. *See* CLAYTON-PEDERSEN ET AL., *supra* note 67, at 6-8 (providing an example of the divergent interests and viewpoints pertaining to higher education).

87. *See* GREATER EXPECTATIONS, *supra* note 64, at 16 ("The departmental structure reinforces the atomization of the curriculum by dividing knowledge into distinct fields, even though scholarship, learning, and life have no such artificial boundaries.").

88. *See id.* ("In too many institutions, faculty members feel the strongest attachments to their disciplines, the weakest to the institution as a whole.").

89. *See* WILLIAMS, *supra* note 81.

90. *See id.* at 5-8.

and, (d) create a reinvigorated, twenty-first-century educational process that has diversity and inclusion at the center.[91] Accomplishing these tasks will require that those in academia behave more collaboratively to ensure that the curriculum is consistent with the consensus learning goals and that it fosters greater intentionality in communicating expectations to all constituents.[92] Yet, many educational leaders recognize that they are ill-equipped to connect their diversity and educational quality efforts.[93]

"Making Excellence Inclusive" provides a new conception of how to address the nation's educational inequities through an underlying premise that is simple: all students can and will learn at high levels if America's education community endorses a common set of essential learning outcomes from school through college and provides every student with a qualified instructor who can foster students' high achievement.[94] If we can hold these two concepts tightly together—excellence and inclusion—we can work towards providing a high-quality education for all students, thereby addressing the concerns of both "desegregation" and "colorblind" champions. The concept of "Inclusive Excellence" is both inclusive and differentiated—with its tenets focused on educational excellence for all—and it calls for greater intentionality in addressing differences to enhance learning and to make learning more inclusive.

As previously mentioned, "Making Excellence Inclusive" requires work at all institutional levels and applies to the curriculum, students, faculty, staff, and the institution as a whole. However all of these functional aspects of institutional change are not discussed here.[95] Table 1 juxtaposes traditional notions of excellence and the value added of "Inclusive Excellence" only as they relate to the student body and the curriculum.

91. *See* ALMA CLAYTON-PEDERSEN & CARYN MCTIGHE MUSIL, *Introduction to* WILLIAMS ET AL., *supra* note 81, at iii, vi.

92. *See id.* at vii.

93. *See id.*

94. *See id.*

95. *See* CLAYTON-PEDERSEN ET AL., *supra* note 67.

TABLE 1: TRADITIONAL NOTIONS OF EXCELLENCE AS CONTRASTED WITH EXPANDED NOTIONS OF "INCLUSIVE EXCELLENCE"[96]

A. STUDENT-BASED CRITERIA

Traditional Notions of Excellence	***Expanded* Notions of "Inclusive Excellence"**
Entering Students	
• Possess high-average SAT scores and high-average high school GPAs • Have taken high number of AP courses[97] • Are evaluated based on quality of high schools • Receive significant amounts of "merit" aid	• Demonstrate their interest in and/or experience with engaging diversity in the curriculum and in interpersonal relationships • Are resilient in pursuing academic endeavors in the face of academic and personal challenges
Current Students	
• Possess high overall GPAs in the aggregate and within majors • Are individuals who regularly attain national/competitive scholarships and internships • Are in honor societies and on dean's lists, enroll in post-baccalaureate studies, and are employed by high-profile companies	• Share responsibility for their learning with faculty and other campus educators[98] • Are encouraged to explore their identities as scholars, leaders, and citizens through curricular and co-curricular experiences • Strengthen their intercultural competencies and the ability to work in diverse groups over time • Build an increasingly sophisticated and coherent educational experience from both curricular and co-curricular sources • Move through a career development process that incorporates curricular and co-curricular experiences over time, charts experiential learning opportunities, and helps clarify and prepare for post-graduate study

96. Tables 1 and 2 are both adapted from a chart published in the report, *Making Excellence Inclusive*. *See id.*

97. Most give a ranking to the high school based on the number of AP courses available, rather than ranking the students based on the ratio of AP course offered to AP courses taken.

98. Here, we are referring to graduate education in disciplines such as humanities, science, social sciences, mathematics, and professional programs, such as law, medicine, business, education, etc.

B. CURRICULUM-BASED CRITERIA

Traditional Notions of Excellence	***Expanded* Notions of "Inclusive Excellence"**
• Conveys well-established knowledge within the confines of the classroom • Emphasizes specialization in a discipline • Focuses on majority Western cultures, perspectives, and issues • Values mastery of knowledge at discrete points in time • Values learning for learning's sake • Emphasizes individual work • Promotes objectivity • Emphasizes what an educated person should know	• Facilitates learning through in- and out-of-class experiences • Fosters informed probing of ideas and values • Emphasizes cultural complexity, a range of cultures and identities, and global issues • Values practical knowledge and experiential learning as well as the integration and application of knowledge over time • Values collaborative construction of knowledge and learning, particularly in equal status diverse groups • Draws on relevant personal experience of students and others alongside third-person sources • Emphasizes where to find needed information, how to evaluate its accuracy, and how to put knowledge into action • Assesses students' learning directly, over time, and with tools that reflect and engage different learning styles and strengths

The crux of this new work will be in educational leaders' recognition of the institution's role in establishing changes in policies and practices required to support the action of "Making Excellence Inclusive." Achieving the hallmarks of an "Inclusive Excellence" institution requires a different approach to the work of diversity, equity, and inclusion, as they relate to students and the curriculum, and as the examples in Table 2 indicate.

TABLE 2: ATTAINING "INCLUSIVE EXCELLENCE"—INSTITUTIONAL HALLMARKS

Institutional Hallmarks of "Inclusive Excellence"	
Students	**Curriculum**
• Student learning outcomes reflect engagement with diversity and inclusion in ways specific to institutional mission and type • Graduates have undertaken a significant research experience or other form of cumulative project in their field of study that considers how aspects of diversity and inclusion influence the findings of the disciplinary/interdisciplinary research • Graduates can demonstrate that they are prepared: o To excel in a challenging work environment o To be responsible citizens in a diverse democracy o For graduate-level coursework in one or more domains	• Engagement with diversity/differences, and inclusion in ways specific to institutional mission and type are reflected in the duties of staff • Resources are directed toward the staff members and units that delineate how they will integrate diversity into their day-to-day practices and demonstrate progress in doing so • Creates a learning environment that ensures that educational benefits of diversity/differences is derived through the learning process • Fosters application of knowledge to real-life problems that encourages consideration of different values, and fosters context and understanding of how these shape the solutions derived and the insights developed

Taking these notions seriously would mean that preparation for education, law, business, and health professions, as well as for undergraduate education generally, can be significantly enhanced.

A. Engaging Diversity to Achieve Essential Learning Outcomes

As mentioned, the National Leadership Council's LEAP Report outlined the emerging national consensus on a set of key learning outcomes—knowledge, skills, responsibilities, and integrative abilities—that a twenty-first-century college graduate must achieve.[99] Engaging diversity

99. Press Release, AAC&U, Liberal Education Outcomes Widely Endorsed as Essential for Success, but Evidence Sparse on College Achievement, New Report Suggests (Nov. 4, 2005), *available at* http://www.aaacu.org/press_room/press_relseases/2005/Outcomes.cfm.

is a crucial element in accomplishing every one of these outcome categories. In other words, one cannot achieve excellence in these outcomes without learning about diversity as content, as a set of cognitive and inter-group skills, as an element of civic responsibility, and as a necessary component in the integration of learning.[100] At the same time, in valuing the diversity of higher education institutions, each campus or set of campuses will ultimately determine which specific actions will be taken to foster all students' achievement of key outcomes at high levels.[101]

B. Diversity as a Learning Resource Throughout the Institution

Cultural diversity reflects a myriad of experiences and includes group and individual identity dimensions (e.g., race/ethnicity, class, gender, sexual orientation, national origin, first language, physical and learning ability, cognitive frameworks, and learning styles).[102] Such diversity matters at all levels of institutional functioning (e.g., staff, faculty, administrators, and students), plays out in specific ways (e.g., specific legacies of inclusion and exclusion may affect the relevance of certain dimensions for different groups and on specific campuses), and pays attention to commonalities and differences within groups as well as between groups. Thus, the cultural diversity that everyone brings to the educational experience is tapped in order to enhance student learning and institutional vitality.

At the institutional level, the mission, vision statement, and strategic plan should chart each member's contribution to an environment that facilitates both inclusion and excellence. Specifically, it should focus on students' learning and development. Resources are directed in ways that are integrated, coherent, and intentional to make excellence inclusive. In turn, administrators, faculty, and staff are mindful of institution-level, unit-level, and individual-level goals and have shared responsibility for all three.

Organizationally, it means establishing goals, action plans (including benchmarks and timelines), and evaluation mechanisms for "Inclusive Excellence" alongside robust assessment of student learning related to the outcomes. Moreover, the effectiveness of campus functioning is assessed in relation to its service to inclusive forms of institutional and educational excellence.

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100. *See* GREATER EXPECTATIONS, *supra* note 64, at 27-28.

101. However, the outcomes should guide the determination of what the student should know and be able to do at each level of education, guide the content of the curriculum, and guide the determination of whether the outcomes have been achieved and by whom.

102. *See supra* note 31 and accompanying text.

VI. THE CONSEQUENCES OF CONTINUING "BUSINESS AS USUAL"

The Supreme Court decision in *Grutter* signaled to colleges and universities the imperative of connecting diversity efforts to their educational mission and practices more fundamentally and comprehensively than ever before.[103] Business, military, and community leaders affirmed what educational researchers had documented: learning in an environment that engages diversity richly provides all students with the cognitive skills, intercultural competencies, and civic understanding necessary to help them thrive in work and citizenship.[104] Ultimately, the Court did not leave campuses to maintain the status quo—it challenged higher education to address diversity as a core aspect of educational excellence in both undergraduate and graduate level education.[105] It is our contention that the "Making Excellence Inclusive" framework and its new conception of diversity and excellence will help craft better focused diversity initiatives.[106]

This new vision of diversity in American education seeks to finally address fully the spirit of *Brown* and to develop in all students the knowledge, skills, and capacities our nation needs for the twenty-first century. This vision calls for enacting far more nuanced diversity initiatives, providing equitable institutional inputs to address continuing disparities in the quality of teaching and learning experienced by all students, and ensuring that educational outcomes maximize the productivity potential of our entire population, not just a privileged few. We argue that this shift is essential to establish the United States as a global leader with both a diverse and a highly educated population, and to fulfill the Constitution's democratic ideal of equal opportunity and equal justice for all.[107]

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103. The Michigan diversity policy upheld in *Grutter* was implemented "to ensure that a critical mass of underrepresented minority students would be reached so as to realize the educational benefits of a diverse student body" for the purpose of "enduc[ing] classroom discussion and the educational experience both inside and outside the classroom." Grutter v. Bollinger, 539 U.S. 306, 318-19 (2003).

104. *See* PETER D. HART RESEARCH ASSOCIATES, HOW SHOULD COLLEGES PREPARE STUDENTS TO SUCCEED IN TODAY'S GLOBAL ECONOMY? 8 (2006), *available at* http://www.gsu.edu/files/Colleges_Prepare_Students_to_Succeed.pdf.

105. *See Grutter*, 539 U.S. at 330-31 (describing the benefits of educational diversity as "not theoretical but real" and acknowledging diversity's important role in preparing students for "work and citizenship" and in "maintaining the fabric of society").

106. Our rationale for this argument is that: (a) Caucasian culture has been the center around which learning about diversity has been framed, (b) the state of disparity in educational outcomes for African Americans and others continues, and (c) opportunities for professional careers have been limited as a consequence of both (a) and (b).

107. *See* U.S. CONST. amend. XIV, § 1.

While some may view this rationale as altruistic, we offer at least three practical reasons for a new approach: (1) to address the need for effective communication and sharing of ideas in light of our growing global interdependence; (2) to appropriately respond to and capitalize on the nation's shifting demographics; and (3) to develop and sustain a democracy and a workforce that is well prepared to interact with people different from themselves.

But what will happen, then, if the nation fails to address effectively the challenges of our broadening and increasing diversity? Can we move beyond political rhetoric about the disparities in education and garner the political will to actually address this complex challenge? In this section, we describe what may be the consequences if our nation's population responds negatively to these questions.

A. Global Interdependence and Competition

To examine America's increasing global interdependence, we need look no further than two economic examples that occurred in 2007: (1) the recalls of imported goods from international manufacturers, including tainted food for animal and human consumption, and potentially dangerous toy products containing lead paint, and (2) the "hiccup" in America's sub-prime real estate lending sector, which caused financial markets to adjust radically to avoid catastrophic losses, both in the United States and abroad.[108] As trade distinctions between developed nations become increasingly blurred, our vulnerability increases. At the same time, less attention is being given to educating the population for greater understanding of differences. Having a shared future with the rest of the world provides a practical imperative to ensure our future workers and leaders will have developed a strong sense of personal and social responsibility to behave with integrity in light of this interdependence. In this context of shared futures, we can ill afford to produce college graduates who will make critical decisions based solely in their individual self-interest and advancement and thus negatively affect masses of people, or who will disregard the cultural ethos of the communities affected by the decisions they make.

In addition to global interdependence, there will be an increase in competition for the type of creative talent that fuels innovation for global markets and the economy. Similar to the American economy of the

108. *See, e.g., 104 Deaths Reported in Pet Food Recall*, NY. TIMES, Mar. 28, 2007, *available at* http://www.nytimes.com/2007/03/26/excience/28brfs-pet.html; Bill Trancer, *Tainted Pet Food vs. Lead-Paint Toys*, TIME, Aug. 23, 2007, *available at* http://www.time.com/time/business/article/0,8599,1655656,00.html; Jenny Anderson & Heather Timmons, *Why a U.S. Subprime Mortgage Crisis is Felt Around the World*, N.Y. TIMES, Aug. 31, 2007, *available at* http://www.nytimes.com/2007/08/31/business/worldbusiness/31derivatives.html

twentieth century, when the world's trading boundaries were far more defined, the global economy is characterized by fierce competition not only for the inexpensive production of goods, but also for the best and brightest talent and for control of these necessary resources for success. The difference is that now, rather than choosing among limited resources the global marketplace both sets the standard for trade and increases options for expanding economies. People who are interculturally adept at working in a variety of environments with diverse populations will be best able to address successfully the market challenges companies regularly face.

A recent report from the non-profit organization Making Opportunity Affordable indicates that the United States must increase the number of people earning college degrees each year by 781,000 between 2007 and 2025 to maintain an edge with countries with whom it competes economically.[109] Of course, those who hold power and influence could decline to dedicate the necessary resources required to offer a high-quality education to all students. Given the reality of the shifting demographics of our nation, we will not meet the human resource needs articulated in *this* report if we fail to deliver these educational resources to every young person in our current and future population.

Further, our ability to draw from an international talent pool is both limited and incompatible with the nation's ideals, given that America is competing with other countries seeking the same resources.[110] A failure to invest in the education of our own population perpetuates the morale-depleting message that the United States prefers to use the human resources from other countries rather than to develop its own.[111] Even more so now

109. TRAVIS REINDL, HITTING HOME: QUALITY, COST, AND ACCESS CHALLENGES CONFRONTING HIGHER EDUCATION TODAY, *available at* http://www.makingopportunityaffordable.org/wp-content/file_uploads/ Hitting_Home_030107.pdf.

110. Press Release, Senator Joe Lieberman, Lieberman Proposes Bill to Bolster Science and Technology Education (May 20, 2004), *available at* http://lieberman.senate.gov/newsroom/release.cfm?id=221817 ("Recent reports have highlighted the decline in science and engineering graduates in our country, which has threatened the United States' worldwide dominance in science and innovation. Foreign advances in basic science now often exceed those in the United States . . . . The universities in some European and Asian countries are attracting science and engineering majors at much higher rates than the universities in the United States.").

111. *See* WorkPermit.com, Demand for Foreign Scientists and Engineers Increasing, Jan. 28, 2008, http://workpermit.com/news/2008-01-28/us/foreign-scientists-engineers-global-demand-increasing.htm ("The United States leads in attracting foreign students, even after seeing a dip in student visas after September 11th, 2001 . . . . While there are increasing amounts of foreign science and engineering students, more and more science and engineering workers in the US were born overseas, as well. Some attribute this trend to America's ability to attract foreign talent. However, others feel that the increase in foreign graduates is because the US does little to stimulate interest in science and engineering among its native-born students.").

than at any other time, and especially in light of our hard-learned historical lessons, America ultimately could earn the reputation of the land of opportunists rather than the "land of opportunity."

B. America's Continuing Educational Inequities

A recent report by the Alliance for Excellent Education compares the earning disparities between those with various levels of education completion against those who are high school dropouts.[112] It is not surprising that the more education one has, the higher one's earning potential becomes. Yet data from the United States Census Bureau indicates little change in high school graduation rates for students historically underrepresented in higher education.[113] We may never fully know if it is the physical conditions of many urban schools, uninteresting curricula, under-prepared teachers, the lack of student motivation or family support, or all of these factors that lead to students dropping out.[114] We do know, however, that not attaining at least a high school diploma is highly correlated with incarceration—seventy-five percent of those incarcerated failed to complete high school—and a disproportionate number of those incarcerated are from racial and ethnic minority groups.[115]

The fact remains that Americans are using their limited resources to build maximum security prisons without a national debate, while endlessly disputing strategies that will maximize all students' educational experience and eliminate inequities. Consciously or not, we have relegated education to a lower priority, and, in the end, we lose the social and economic benefit of having educated the population. In doing so we add the cost of perpetuating

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112. *See* ALLIANCE FOR EXCELLENT EDUCATION, THE HIGH COST OF HIGH SCHOOL DROPOUTS: WHAT THE NATION PAYS FOR INADEQUATE HIGH SCHOOLS 1 (2007), *available at* http://www.all4ed.org/files/HighCost.pdf. "The average income for a high school dropout in 2005 was $17,299, compared to $26,933 for a high school graduate, a difference of $9,634." *Id.*; *see also Education and Earnings,* Missouri Women's Council, http://womenscounsil.orgdocuments/FAQs/Education%20and%20Earnings.pdf ("In the U.S., adults ages 18 and older in 2004 earned an average mean income of $34,626 per year. Average earnings ranged from $16,485 for high school dropouts to $26,156 for high school graduates, $49,656 for college graduates, $65,190 for master degree graduates, and $104,299 for workers with professional degrees.").

113. *See* U.S. CENSUS BUREAU, EDUCATIONAL ATTAINMENT IN THE UNITED STATES: 2003, at 3 (2004), *available at* http://www.census.gov/prod/2004pubs/p20-550.pdf.

114. *See Reasons Why Students Drop Out*, N.Y. TIMES, Sept. 14, 1994, *available at* http://query.nytimes.com/gst/fullpage.html?res=9E0CE1DC153BF937A2575AC0A962958260&sec=&spon=&pagewanted=print ("More than a quarter of the girls who drop out of high school give pregnancy as the reason, and nearly 8 percent of male dropouts say they left school because they became fathers. But the most common reason remains a dislike of school, the Education Department said today.").

115. *See Reducing the Nations Dropout Rate: Dropout Fact Sheet*, NEA, http://www.nea.org/presscenter/actionplantfacts.html ("75 percent of America's state prison inmates are high school dropouts [and] 59 percent of America's federal prison inmates did not complete high school.").

poor communities.[116] If our leaders instead decide to provide the facilities, human resources, and financial capital to ensure that every child has access to a high-quality education, the nation as a whole gains by way of greater tax revenue, higher productivity, and possibly fewer people incarcerated.[117] Continuing with "business as usual" surely means that a significant proportion of the nation's young people will be under educated and will prey on the larger society as a means of getting a slice of "the American pie." Instead of having a larger, better educated workforce to advance our economy and participate in the democratic process, we will likely create a larger class of people who are disenfranchised. We can decide to pay now or pay more later.

C. America's Changing Demographics

According to the United States Census Bureau, by 2050 those who are racial and ethnic minorities will comprise an equal portion of the population as Whites,[118] who currently make up sixty-nine percent of our population.[119] This projected population shift most greatly affects the very groups that are disproportionately represented among the educationally underserved. This means that the population will increasingly be made up of people who are currently underrepresented amongst academic high achievers throughout the educational pipeline.[120] We, as a nation, cannot be content to have a significant portion of K-12 students not completing high school; college-

116. Anthony P. Carnevale, *Investing in Human Capital—Accountability in Standards-Based Education*, BNET.COM, Mar. 2001, *available at* http://findarticles.com/p/articles/mi_m0JSD/is_3_58/ai_76880159/pg_1.

117. *See supra* note 115 ("Everyone benefits from increased graduation rates. [E]ach dropout, over his or her lifetime, costs the nation approximately $260,000. Unless high schools are able to graduate their students at higher rates, more than 12 million students will drop out during the course of the next decade. The result will be a loss to the nation of $3 trillion.") (emphasis in original) (internal citation omitted).

118. *See generally* Angelina Kewal Ramani, Lauren Gilbertson, Mary Ann Fox & Stephen Provasnik, U.S. Dep't of Educ., National Center for Education Statistics, Status and Trends in the Education of Racial and Ethnic Minorities, http:// nces.ed.gov/pubs2007/2008039 (last visited Oct. 28, 2007).

119. U.S. CENSUS BUREAU, TABLE 1A. PROJECTED POPULATION OF THE UNITED STATES, BY RACE AND HISPANIC ORIGIN: 2000 TO 2050, IN U.S. INTERIM PROJECTIONS BY AGE, SEX, RACE, AND HISPANIC ORIGIN, Mar. 18, 2004, *available at* http://www.census.org/ipc/www/usinterimproj/natprojtab01a.pdf.

120. *See generally* U.S. COMMISSION ON CIVIL RIGHTS, THE U.S. DEPARTMENT OF EDUCATION'S RACE-NEUTRAL ALTERNATIVES IN POSTSECONDARY EDUCATION: INNOVATIVE APPROACHES TO DIVERSITY, ARE THEY VIABLE SUBSTITUTES FOR AFFIRMATIVE ACTION?, *available at* http://www.law.umaryland.edu/marshall/usccr/documents/cr12d814.pdf.

goers under-prepared for a rigorous college curriculum; college completers lacking essential knowledge, skills, and competencies to be effective citizens and productive workers; or masters, doctoral, and professional school graduates inept at resolving the novel challenges they will face in their chosen fields in interacting with people who are different from themselves. Having a significant portion of the population undereducated will risk the country's very vitality and viability as a democracy, as a socially responsible people, and as an economic power.

D. Implication of Inaction for America's Democratic and Legal Systems

Mindful that this article is intended for a law journal, we would be remiss if some attention were not given to what these data mean for our nation's laws as embodied in the democratic process, our system of justice, and the legal profession. From the inequities that naturally result when our nation fails to provide universal access to high-quality education, what logically flows is a more multifaceted chain reaction within our most cherished institution: the law.

First, the underlying premise of democratic government "of the people, by the people, for the people"[121] is that we are able to participate, both directly and through our elected representatives, in collective deliberations that affect us individually and as a nation. Vital to this process is a community that is knowledgeable, thinks critically, and can engage in responsible citizenship. This requires that people be able to understand the consequences of laws they enact and how these laws may affect different communities disproportionately. It also requires people to possess a strong sense of social and ethical responsibility to make decisions for the greater good of the society.

Because our democratic process is organic and continues to evolve over time, each new generation of Americans is called upon to resolve the social and economic dilemmas of its time. It is well documented that education is essential to political engagement, which in turn leads to increased voter participation.[122] For America to continue its commitment to being the world's champion of democracy and justice, we must first ensure that our own population has access to high-quality education in order for it to fully participate in the democratic process. This population is increasingly comprised of the very people that are currently undereducated and thus limited in their ability to meaningfully participate.

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121. Abraham Lincoln, The Gettysburg Address (November 19, 1863).

122. *See* NORMAN H. NIE ET AL., EDUCATION AND DEMOCRATIC CITIZENSHIP IN AMERICA 31 (1996).

Second, America's democracy depends on a justice system that is both objective and cognizant of disparities in the application of the law.[123] There is a growing body of evidence that shows current racial and ethnic minorities in America, while underrepresented in the democratic process that produces our laws, are overrepresented in our criminal justice system. One need look no further than the outreach programs of the Innocence Project[124] and Sister Helen Prejean's *Dead Man Walking*[125] for antidotal evidence of the insidious consequences of an unjust judicial process that fails to account for how race and ethnicity may influence the behavior of law enforcement, jurists, and officers of the court alike.

Our education system has a two-fold role in rectifying the current state of our justice system: one for those subjected to it and another for those who administer it. As previously mentioned, the known educational disparities among particular populations are highly correlated with disproportionate levels of minority incarceration. A high-quality education for all of the nation's population will directly address this situation by affording those who have been excluded a different means of obtaining a piece of the "American pie" and the capacity for meaningful involvement in the democratic process.

An educational environment that provides a richer understanding of diversity to those who administer our justice system will help develop their intercultural competence and better enable them to question stereotypes—in themselves and in others—and give credence to their ethical obligation to fairly apply laws. Only when this two-pronged role is developed comprehensively will our justice system exemplify the intended ideals of America's democracy.

Third, our nation's active pursuit of capitalizing on the developing global economy, as noted above, drives changes in the dynamics of

123. Unfortunately, the stereotypes of intellectual inferiority of persons of color, together with the economic depression often tied to urban environments where the disenfranchised groups are clustered, are pervasive and often generalized to the entire population of African-Americans, Latinos, and other underrepresented groups. *See supra*, Part III.B.1.

124. "The Innocence Project is a national litigation and public policy organization dedicated to exonerating wrongfully convicted people through DNA testing and reforming the criminal justice system to prevent future injustice." Innocence Project Home Page, http://www.innocenceproject.org (last visited Jan. 29, 2008). Of the 211 people exonerated by the organization, 147 were either African-American or Latino. *See* Innocence Project, News and Information: Fact Sheet, http://www.innocenceproject.org/Content/351.php (last visited Jan. 29, 2008). The leading cause of wrongful convictions is mistaken eyewitness testimony, and nearly half of incorrect eyewitness identifications occurred when the identification was cross-racial. *See id.*

125. *See* HELEN PREJEAN, DEAD MEN WALKING: AN EYE WITNESS ACCOUNT OF THE DEATH PENALTY IN THE UNITED STATES (1994).

commercial and corporate environments, and has also required re-envisioning how attorneys service client needs. Clients that drive the "business of law" are now demanding that its legal service providers reflect the diversity encompassed within the client organizations. For example, more than eighty major corporations signed onto a diversity initiative known as the "Call to Action: Diversity in the Legal Profession." Created by Sara Lee's Chief Legal Officer Roderick Palmore, the Call to Action focuses on critically reviewing law firms' diversity progress—particularly in hiring and retention—and choosing to hire those law firms that demonstrate a commitment to diversity.[126]

Yet recent reports indicate greater homogeneity in law school enrollments, which further jeopardize prospects of improving the inequities that exist in hiring, retention, promotion, and compensation of minority attorneys. A 2006 study of the American Bar Association Commission on Women in the Profession noted the significant disparity of treatment for women of color in law firms and served as a "jarring wake-up call" to the profession.[127] As that study's authors affirm: "We are not just losing talent; we are treating people in ways that do not speak well of our profession or the values that undergird it."[128] Law firms with the goal of sustaining business with corporate clients, particularly those operating in the global marketplace, can ill afford to idly observe these inequities. Rather, the legal profession must take action to ensure that its pipeline of talented minority attorneys is not stifled at the source through a lack of access to high-quality education at earlier stages in the education pipeline. All things considered, the issue of diversity among attorneys has become both an ethical and business imperative.

We have argued that the global interdependence and competition, the continued educational inequities, the changing demographics and the implications of these realities for our democracy and legal system provide strong impetus for discontinuing "business as usual" with regard to diversity and inclusion in American education. We—the authors, as well as AAC&U's framers of "Inclusive Excellence" and its National Leadership Council—express the full weight of these educational, economic, legal and democratic imperatives when calling on the nation's leaders to work effectively at "Making Excellence Inclusive".

126. *See* PALMORE, *supra* note 76.

127. ABA COMMISSION ON WOMEN IN THE PROFESSION, VISIBLE INVISIBILITY: WOMEN OF COLOR IN LAW FIRMS 7 (2006).

128. *Id.*

VII. CONCLUSION

In this article, we have underscored the importance of abandoning the premise of "access equals equality" encouraged by early remedies for legally sanctioned segregation in education, and we have offered several rationales and strategies to quicken the pace of change in education.[129] Recognizing some of the difficulties in making these changes, we have offered a framework recommended by AAC&U's National Leadership Council for establishing a set of common learning outcomes that bridge the gaps between the school, college, and work experiences for all students.[130] The framework requires assessing the achievement of these outcomes by students' demonstrated ability to integrate and apply their knowledge to real-world problems.[131] While these authentic problems will vary at each successive level of education, the framework shows promise of both vertically integrating the various components of our systems of education and directly addressing how we can learn at high levels through our population's differences.[132]

We have argued for a richer understanding of America's broad diversity and have recognized that doing so means differentiating among population groups—in experiences with family education, employment, housing, health care, and other differences that influence the assets each student brings to the learning environment.[133] Finally, we have offered some of the consequences for our democracy if we fail to address the challenges of an increasingly diverse population effectively.[134] We have indicated that the ever-changing global environment requires that the general public end its stagnant conception of our diversity and take action to create a system of education that affords every student high-quality learning opportunities, and finally establish a democracy that truly champions justice and equality.[135] Anything less may leave the majority of the population scrambling to survive in a hostile environment, with the privileged withdrawing from dialogues about race, ethnicity, and other differences that are difficult and often uncomfortable, but necessary to help us fully realize our democratic ideals.

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129. *See supra* notes 8-16 and accompanying text.
130. *See supra* notes 17-27 and accompanying text.
131. *See supra* notes 28-38 and accompanying text.
132. *Id.*
133. *See supra* notes 39-44 and accompanying text.
134. *See supra* notes 45-53.
135. *Id.*